valid in so far as the appointment is exercised by will, but the courts have hesitated to commit themselves as to what would be their decision if the power were exercised by deed. The contention that the law impaired the obligation of contract was disposed of summarily by showing that the remainderman had no contract with the donor or with the state, and that the state is not deprived of its sovereign right to exercise the taxing power upon the making of a will in the future by which the estate was given to the appointee.

CONTRACTS—ABANDONMENT—RECOVERY.—One Thornton entered into a contract with defendant for grading, macadamizing, and curbing certain of its streets, Thornton to be paid the tenth of each month, according to the estimates of the superintending engineer. The engineer made a proper estimate, the city council approved it, but no warrant for payment was issued because of lack of money in the city treasury for that purpose. Thornton abandoned the work and assigned the estimate to plaintiff, who sued for the work actually performed. *Held,* defendant's failure to pay the one installment justified Thornton in abandoning the contract and plaintiff could recover. *Peet* v. *City of East Grand Forks* (1907), — Minn. —, 112 N. W. Rep. 1003.

In connection with this decision it is interesting to note the different degrees to which the courts extend the doctrine of dependent promises in contracts when applying it to promises to pay for certain work or materials at a specified time. The cases appear to be divided into three main groups. The first consists of those authorities supporting the rule that a failure to pay one installment of a contract will not entitle the other party to abandon the contract unless such failure to pay is accompanied by acts, words, or conduct showing an intention to repudiate the contract. *Mersey Steel & Iron Co.* v. *Naylor,* 9 App. Cas. 434; *Campbell* v. *McLeod,* 24 N. S. 66; *Johnson Forge Co.* v. *Leonard & Co.,* 3 Penne. (Del.) 342, 94 Am. St. Rep. 86, 57 L. R. A. 225, 51 Atl. 305 (See 1 MICH. LAW REV. 76); *Osgood* v. *Bauder & Co.,* 75 Iowa 550, 1 L. R. A. 655, 39 N. W. 887; *Winchester* v. *Newton,* 2 Allen (Mass.) 492; *Trotter* v. *Heckscher,* 40 N. J. Eq. 612. If he does abandon when no such intention is evidenced, he is rendered liable in an action for damages. *West* v. *Bechtel,* 125 Mich. 144, 51 L. R. A. 791, 84 N. W. 69. The second class of decisions is illustrated by the principal case, which construes such promises as so far dependent that a mere failure to pay is sufficient to entitle the other party to rescind the contract and recover on a quantum meruit for the work done or materials delivered. This rule is probably the weight of authority in the United States. *Canal Co.* v. *Gordon,* 6 Wall. (U. S.) 561, 18 L. Ed. 894; *San Francisco Bridge Co.* v. *Dumbarton Land & Improvement Co.,* 119 Cal. 272, 51 Pac. 335; *Newton* v. *Highland Improvement Co.,* 62 Minn. 436, 64 N. W. 1146; *Dyer* v. *Middle Kittitas Irrigation District,* 25 Wash. 80, 64 Pac. 1009. But the party abandoning in such case cannot recover on the contract for profits that he would have made if he had completed the contract unless he is "prevented" from further performance. *L. S. & M. S. Ry. Co.* v. *Richards,* 152 Ill. 59, 38 N. E. 773, 30 L. R. A. 33; *Keeler* v. *Clifford,* 165 Ill. 544, 46 N. E. 248; *Porter* v. *Arrowhead Reservoir Co.,* 100 Cal. 500, 35 Pac. 146; *Beatty* v. *Howe Lumber Co.,* 77

Minn. 272, 79 N. W. 1013; *Wharton* v. *Winch,* 140 N. Y. 287, 35 N. E. 589; *Bethel & Co.* v. *Salem Improvement Co.,* 93 Va. 354, 57 Am. St. Rep. 808, 33 L. R. A. 602, 25 S. E. 304. The third group includes a few cases which go one step further and hold that such failure to pay gives the opposite party the right to abandon and to recover for the part performed at the contract rate without reference to its reasonable value.. *Eastern Arkansas Hedge Fence Co.* v. *Tanner,* 67 Ark. 156, 53 S. W. 886; *Bean* v. *Miller,* 69 Mo. 384.

COURTS—JURISDICTION OF CIRCUIT COURT—ENJOINING WRIT OF ERROR.—The United States instituted a proceeding in a Circuit Court of the United States for the condemnation of certain real estate of the defendant, Macrum; there was a jury trial which resulted in a verdict in favor of said Macrum. From a judgment entered upon this verdict, the defendant sued out a writ of error, whereupon the United States filed a bill in the same court, sitting in equity, alleging that the defendant, for the purpose of injuring the complainant, was endeavoring to review the former proceedings by a writ of error, and praying that a temporary injunction be granted to restrain the prosecution of such appeal. *Held,* that a Circuit Court of the United States, sitting in equity, has no authority to enjoin a party to a judgment rendered on its law side from suing out a writ of error from an appellate court to review said judgment. *Macrum et al.* v. *United States* (1907), — C. C. A. 3rd Circ. —, 154 Fed. Rep. 653.

There are many cases reported in which one court has made an unsuccessful attempt to enjoin appeals from the judgment of another, but an extended examination of the authorities has failed to disclose any other case in which a court has attempted to enjoin an appeal from its own judgment. The ruling of the Circuit Court granting the relief sought is apparently without precedent, while the decision of the Court of Appeals in dismissing the bill is supported by numerous cases. Thus the courts of the several states have uniformly held that a party will not be enjoined from prosecuting an appeal from a judgment on any ground that might avail him in the appellate court. *State* v. *Jacksonville, etc., Railroad Co.,* 15 Fla. 210; *Ford* v. *Weir,* 24 Miss. 563; *Kilmer* v. *Bradley,* 45 N. Y. Supr. Ct. 585; *Perkins* v. *Woodfolk,* 8 Baxt. 411; *Lopez* v. *Rodriguez,* 3 Tex. App. Civ. Cas., § 112. Furthermore, an injunction from a state court is inoperative in any manner to affect proceedings in federal courts. *Weber* v. *Lee Co.,* 73 U. S. 210; *United States* v. *Council of Keokuk,* 73 U. S. 514; *Riggs* v. *Johnson Co.,* 73 U. S. 166; *Supervisors* v. *Durant,* 76 U. S. 415; *Duncan* v. *Darst,* 42 U. S. 301. Nor will a federal court restrain proceedings of state courts. *Dial* v. *Reynolds,* 96 U. S. 340, and cases there cited. The decision in the principal case rests upon the proposition that the right of appeal from a lower court to one of appellate jurisdiction is an absolute right, and that the lower court has no authority to disallow such an appeal nor to attempt to determine whether any particular case is one in which an appeal lies. In support of this position see *Pullman's Palace Car Co.* v. *Central Transportation Co.* (C. C.), 71 Fed. 809; *Louisville Trust Co.* v. *Stockton,* 18 C. C. A. 408, 72 Fed. 1; *Ex parte Virginia Commissioners,* 112 U. S. 177; *Davidson* v. *Lanier,* 4 Wall. 453; *State* v. *Farlee,* 1 N. J. Law (Coxe) 96; *Hood* v. *New York, etc., Co.,* 23 Conn. 609.